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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,196	12/13/1999	Mark H. Sanders	4077-DIV-REI	9700
30031 75	590 01/26/2004		EXAMINER	
MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL			ISABELLA, DAVID J	
RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			ART UNIT	PAPER NUMBER
			3738	\$1
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Please find below and/or attached an Office communication concerning this application or proceeding.

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•		Application No.	Applicant(s)		
Office Action Summary		09/473,196	SANDERS, MA	SANDERS, MARK H.	
		Examiner	Art Unit		
		DAVID J ISABELLA	3738		
The MAILING DATE of th Period for Reply	is communication app	ears on the cover s	heet with the correspondence	address	
A SHORTENED STATUTORY THE MAILING DATE OF THIS - Extensions of time may be available unde after SIX (6) MONTHS from the mailing di - If the period for reply specified above, ti - If NO period for reply is specified above, ti - Failure to reply within the set or extended - Any reply received by the Office later than earned patent term adjustment. See 37 C Status	COMMUNICATION. r the provisions of 37 CFR 1.13 ate of this communication. ss than thirty (30) days, a reply ne maximum statutory period v period for reply will, by statute three months after the mailing	36(a). In no event, howeve within the statutory minim will apply and will expire SIX cause the application to be	r, may a reply be timely filed um of thirty (30) days will be considered t (6) MONTHS from the mailing date of the	nis communication.	
1) Responsive to communic	ation(s) filed on <u>25 N</u>	ovember 2003.			
2a)⊠ This action is FINAL .	2b)☐ This	action is non-final.			
			al matters, prosecution as to 35 C.D. 11, 453 O.G. 213.	the merits is	
Disposition of Claims					
4)	is/are withdrawed. ed. ected to.				
Application Papers					
	is/are: a) acc nat any objection to the (s) including the correct objected to by the Ex	epted or b) object drawing(s) be held in ion is required if the c	abeyance. See 37 CFR 1.85(a drawing(s) is objected to. See 3	7 CFR 1.121(d).	
12) Acknowledgment is made		n priority under 35 l	LS C & 119(a)-(d) or (f)		
a) All b) Some * c) 1. Certified copies of 2. Certified copies of 3. Copies of the certification from the * See the attached detailed 13) Acknowledgment is made since a specific reference was 37 CFR 1.78. a) The translation of the 14) Acknowledgment is made	None of: the priority document the priority document ied copies of the prio e International Bureau Office action for a list of a claim for domesti vas included in the firs e foreign language pro of a claim for domesti	s have been receives have been received ity documents have u (PCT Rule 17.2(a of the certified copic priority under 35 st sentence of the servisional applications of priority under 35 st servisional applications of priority under 35 st servisional applications of the service of the servi	ed. ed in Application No. e been received in this Natio)). es not received. U.S.C. § 119(e) (to a provision pecification or in an Application has been received.	onal application) ion Data Sheet. nce a specific	
Attachment(s)					
Notice of References Cited (PTO-8922) Notice of Draftsperson's Patent Draw Information Disclosure Statement(s)	ing Review (PTO-948)	5) 🔲 No	terview Summary (PTO-413) Paper otice of Informal Patent Application ther: Discription of the Property of the	(PTO-152)	

Art Unit: 3738

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United

Claims 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mundell, et al (4700697).

Mundell, et al discloses a method to ameliorate sleep apnea including providing a cervical appliance which prevents ventral flexion of the head while maintaining the head in a slightly dorsally flexed position during sleep. Claims 4 and 7, as broadly worded fails to distinguish over the cervical appliance as applied to the patient as disclosed by Mundell, et al. Note, the term "distend" according to the dictionary definition of the same is not limited to the strict meaning as argued by applicant. Clearly the appliance of Mundell, et al is designed to produce a slight dorsal (ie frontal) flexion of the wearer's head sufficiently to increase the oropharyngeal airway (ie alleviating obstruction) to minimize the tendency for apena. If applicant desires to limit the term "distend" to a specific meaning, then applicant is invited to amend the claims to more positively set forth the intended meaning of the term "distend".

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5,6,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mundell, et al (4700697) as applied to claims 4 and 7 above, and further in view of Bancalari (3903869).

Mundell, et al describes one modality for ameliorating sleep apnea. Bancalari teaches a two modality process for combating apnea, including negative pressures to the neck and thoracic region of the body in combination with positive pressure flow through the airway of the patient. In light of Bancalari, to use a positive pressure flow through the airway of the patient in combination with the cervical apparatus of Mundell in order to provide correct neck positioning to ensure an open airway for receipt of positive pressure flow into the airway, would have been obvious to one with ordinary skill in the art.

Response to Arguments

Applicant's arguments filed 1/20/04 have been fully considered but they are not persuasive. Contrary to applicant's arguments, the examiner is allowed to render the broadest interpretation of the claims. Importing meaning from the specification, by the Examiner, is not proper. Applicant argues a particular meaning of the term "distend" while the claim is not limited to applicant's chosen meaning. Examiner has interpreted

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the term "distend" broadly while remaining within the confines of the dictionary

definition of the term.

Allowable Subject Matter

Claims 1-3 are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of

time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to DAVID J ISABELLA whose telephone number is 703-

308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone

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numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3580 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DAVID J ISABELLA Primary Examiner Art Unit 3738

dji January 21, 2004

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Signo ar

ciated : SEPARABLE. -dis-so'cia-bil'i-ty, dis·so·cia·ble (di·so'sha-bal, -shē-a-bal) adi. Capable of being dissolis-so'cia-bly adv. dis-so'cia-ble-ness . n.

dis-so-ci-ate (dī-sō'shē-ār', .-sē-) v. -at-ed, -at-ing, -ates. [Lat. dis-Hook > 2. Chem. To cause to undergo dissociation. -vi. 1. To cease panion. associating: PART. 2. Chem. To undergo dissociation. -dis-so'cl-a'dissociated man from his social environment. - Sidney -vt. 1. To remove from association : SEPARATE <"Marx dis- (reversal) + sociare, to unite < socius, com-

dis-so-ci-a-tion (di-so'se-a'shan, -she-) n. 1. The act of dissociating change in physical condition, as in temperature or pressure, or the as in the generation of multiple personalities. of atoms, single atoms, or ions. b. The separation of an electrolyte or state of being dissociated. 2. Chem. a. The process by which into ions of opposite sign. 3. Psychiat. The separation of a group of action of a solvent causes a molecule to split into less complex groups psychological activities into autonomously functioning units,

dis-sol·u-ble (di-sol'ya-bal) adi. [Lat. dissolubilis < dissolvere, dissolve.] Capable of being dissolved -dis'sol·u·bil'i·ty, dis-sol'u-

dis-so-lute (dīs's-160r') adj. [ME < Lat. dissolutus, p.part. of dissolvere, to dissolve.] Lacking moral restraint: PROFLIGATE. -dis/solute'ly adv. —dis'so-lute'ness n.

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ture. 7. Reduction to a liquid form. —dis'so-lu'tive adi.
dis-solve (di-zôlv') v. -solved, -solving, -solves. [ME dissolven dis-so-lu-tion (dis's-166'shan) tract. 6. Formal adjournment or dismissal of an assembly or legisla-5. Annulment or termination of a formal or legal bond, tie, or connent parts: DECOMPOSITION. 2. Lack of moral restraint. 3. Termination or extinction by deconcentration or dispersion. 4. Death 1. Disintegration into compo-

< Lat. dissolvere: dis, apart + solvere, to release.] -vt. 1. To cause to pass into solution < dissolve instant coffee in water> 2. To rescene transition in a motion-picture film or videotape made by disnext appears behind it and grows clearer as the first dims. -n. A tion-picture film or videotape by having one scene fade out while the Fiedler > 9. Law. To render null: ABROCATE. -vi. 1. To pass into bly or legislature). 7. To affect emotionally. 8. To cause to lose defi-nition: BLUR < "Morality has finally been dissolved in pity"—Leslie by or as if by breaking up: TERMINATE. 6. To dismiss (e.g., an assemseparate into component parts: DISINTEGRATE. 5. To bring to an end duce to liquid form : MELT. 3. To cause to disappear: DISPEL. 4. To lose definition or clarity: fade away. 7. To shift scenes in a motegrated -dis-solv'a-ble adi -dis-solv'er n. 2 To melt. 3. To disperse or break up. 4. To become disin-5. To be moved emotionally dissolved in tears> 6. To

agreement: CONFLICT. 3. Mus. A combination of tones conventionally held to suggest unrelieved tension and to require resolution.

dis-so-nant (dis-nant) adi. [ME dissonaunt < Oft. dissonant < dis so nance (dis enens) also dis so nancy (-nense) n. 1. A dis-sol-vent (di-zol'vent) n. A solvent. -dis-sol'vent adi. harsh or unpleasant combination of sounds : DISCORD. 2 Lack of sonance. -dis so nantily adv. 2. Disagreeing: conflicting 3. Mus. Constituting or producing a dis-Lat. dissonans, pr.part. of dissonare, to be dissonant: dis, apart + sonare, to sound.] 1. Harsh or unpleasant in sound: DISCORDANT.

dis-suade (di-swād') vt. -suad-ed. -suad-ing. -suades. [Lat. dis-suadēre : dis- (reversal) + suadēre, to advise.] To discourage or deter from a course of action or intention by exhortation or persuasion

dis-sua-sion (di-swa'zhan) n. [Lat. dissuasio < dissuadere, to dis suade.] The act or an instance of dissuading. -dis-sua'sive adj -dis-sua'sive-ly adv. -dis-sua'sive-ness n.

dis-sym-me-try (dis-sim'i-tre) n., dis-syl·la-ble (disil's-bel, dis'sil-, dis'sil'-) n. var. of DISYLLABLE. -dis'symmetric (di'si mětrík), dis'symmetri cal adi. --dis' pl -tries. Lack of symmetry

dis-taff (dis'taf') n. stæf, staff.] 1. A staff having a cleft end that holds the unspun flax, wool, or tow from which thread is drawn in spinning by hand. 2. A n's work and domain. 3. Women as a group [ME distaf < OE distæf : dis., bunch of flax +

distaff side n. The maternal branch or female side of a family. **dis-tal** (dis'tal) adi. [DIST(ANT) + AL.] Anat. Located far from the

line of attachment, as a bone. -dis tally adv

dis-taste (dis-tast) n. Dislike or aversion.—vt. tast-ed win ing. tastes. Archoic. I. To feel repugnance for. 2. To offended dis-taste-ful (dis-taste) adj. 1. a. Disagreeable or unplease the distasteful job of laying off workers b. Objectionable of feering of the distasteful of the distant of the d dis-tem-per¹ (dis-tem par) n. [ME distemperen, to upset the ance of the humors < Ofr. destemprer < Med. Lat. distemperen Lat. dis- (reversal) + Lat. temperare, to temper.] 1. a. An infection of the humors of the distemperare, to temper.] dis tant (dis tent) adj. [ME distaunt < OFr. < Lat. distaus!pij of distare, to be remote-: dis-, apart + stare, to stand.] 1. Apar distant future > 3. Located at, coming from, or going to a dist of appetite, a catarrhal discharge from the eyes and nose, and offer narrial narralysis and death h. Any of various similar mammals relating to mental distance or absent mindedness <a distant separate in space or time. diseases. 2. Bad temper: PEFVISHNESS. 3. Social or political disnut partial paralysis and death. b. Any of various similar mamn virus disease occurring in certain mammals, esp. dogs, marked by ful glare > -dis-taste fully adv. fensive < distasteful magazines> 2. Expressing distaste < a distant 2. Far removed in space or time. dis-taste ful ness n

_vt. -pered; -pering, -pers. To upset. dis-tend (lissend) v.-tend-ed, -tend-ing, -tends. [MI dis-dis-tend (lissend) v.-tend-ed, -tendere, to stretch.] -tendere to stretch.] cause to expand by or as if by internal pressure: DILATE. 2. To str b. The paint used in distemper. 2. A painting done in distempt out in all directions: EXTEND ors) with water and size. 2. To paint in distemper. Lat. distemperare. —see DISTEMPER!] 1. a. A process of painting which pigments are mixed with water and a glue-size or was swell out or expand from or as if from internal pressure. binder, used for flat wall decoration or for scenic and poster pain 1

dis-ten-si-ble (di-sten'sa-bal) adi. Capable of being disten distich (distik) n. pl. tichs. [Lat. distichon < Gk. distikhos having two rows or verses : di-, two + stikhos lin dis-ten-tion also dis-ten-sion (di-sten-shan) n. [Minimum dis-ten-shan] n. [Minimum dis-ten-sha sioun < Lat. distentio < distentus, p.part. of distendere, to distente The act of distending or state of being distended.

verse.] A verse couplet, esp. one used in a Latin or Greek ele

dis-ti-chous (dis'ti-kas) adj. [Llat. distichus, having two my Gk. distikhos. —see DISTICH.]-Arranged in two vertical rows of on opposite sides of an axis. —Used of leaves. —dis'ti-chous'ly dis-till (di-stil') v -tilled, -tilling, -tills. [ME distillen dis-til (di-stil') v. Chiefly Brit. var. of DISTILL by distillation. 4. To separate or extract: the essence of 5. To exude or give off in drops. — vivilia undergo or be produced by distillation. 2. To fall or exude in the condensate of the produced by distillation. stilla, drop.] extract (a distillate) by distillation. 3. To refine or purify by or distiller < Lat. destillare, to trickle : distill'a ble adi -vt. 1. To subject (a substance) to distillation. de-, down + stillare, to,d

dis til·late (dis'ta-lat', lit, di-stil'it) n. 1. The liquid cond dis til·la tion (dis ta-la shan) n. 1. Any of various heat-deper densation. 2. A distillate. subsequent collection of components by differential cooling to mixture or substance, esp. the vaporization of a liquid mixture processes used to purify or separate a fraction of a relatively con from vapor in distillation. 2. An essence or purified form.

miscible liquids ascending in the shell as vapor.

dis-till-er (distil'-) n. 1. One that distills, as a condense. distillation column n. A tall cylindrical metal shell inte maker of alcoholic liquors by distillation.

dis-till-ery (distill-re) n., pl. -ies. A plant or establishmen titted with perforated horizontal plates used to promote separat

distinguere, to distinguish.] 1. Distinguished from all others: one thing from another. 2. Easily perceived: CLEAR <a distin characteristic or property is distinctive if it enables us to disting VIDUAL < met us on three distinct days > usage: Something tinct if it is sharply distinguished or set apart from other thin distilling, esp. alcoholic liquors. 3. Unquestionable : deci decided <a distinct

distinctive (distingk'tiv) adi. 1. Serving to identify or set apart Spical < distinctive regional cuisine > 3. Phonemically relevant distinguer, to distinguish < OFr.] Distinguished in appearance, man DISTINGUISHING < distinctive cattle brands > 2. Characteristic distinc'tive ly adv. (dēs tang-gā', distinc'tive ness n. dis'di-stang ga) ad).

[Fr., p.part.

ner, or, demeanor. Mertin:guish (disting gwish) v. -guished, -guishing, -guish On- distinguere, to sepa 6. [< ME distinguen < OFr. distinguer < Lat. distinguere, to separate.] -- vr. 1. To recognize as being different or distinct. 2. a. To</p> 3. a. To separate into different categories. b. To make noticeable for APART. c. To indicate as separate or different. 4. To cause (one guish-a-ble adj. -dis-tin'guish-a-bly adv self) to be eminent or recognized < distinguish oneself as a scholar perceive, distinctly < distinguish a light in the window > b. To pick vi. To perceive or indicate differences: DISCRIMINATE. -discin DISCERN < distinguished my child's voice in the chorus>

Distinguished Conduct Medal n. A British military decor. distin-guished (disting gwisht) adj. 1. Marked by excellence 2. Dignified in appearance or deportment

extraordinary achievement.

Distinguished Service Cross n. 1. A U.S. Army decoration tion awarded for distinguished conduct in the field.

Distinguished Flying Cross n. 1, A U.S. military decoration A British decoration awarded to officers of the Royal Air Force for awarded for heroism or extraordinary achievement in aenal comba-

Distinguished Service Medal n. 1. A U.S. awarded for exceptional heroism in combat. 2. A British decoration warded to officers of the Royal Navy for bravery in action. ion awarded for distinguished performance of duty. 2. A Britis ecoration awarded to noncommissioned officers and enlisted mountain awarueu to noncommissioned officers and enlisted perionely in the Royal Navy and Royal Marines for distinguished control in the nave military decora

Distinguished Service Order n. A British military decon

ion awarded for bravery in action.

dig-tort (distort) vt.-tort-ed, -torting, -torts. [lat. distorquenting) Map of relation: CONTORT. 2. To give a false or misleading accounting the control of the control dis-, apart + torquere, to twist.] 1. To twist out of prope

ng. 2. The condition of being distorted. 3. A factual misrepresent tion. 4. A distorted image caused by imperfections in an optical spitcing, as a lens: 5. Electron. a. An undesired change in the way (impof a signal. b. A consequence of such a change, esp diminished Entry in reproduction or reception. 6. Psychoanal. The modification of unconscious impulses into forms acceptable by conscious (inframing perception.—distortional adi).

(instruct (distrakt) vr. -tracted, -tracting, -tracts. [ME distraction of the conditional distortion of the conditional distortional distort

nacten < lat. distractus, p.part. of distrachere, to pull away : distractive trackere, to draw.] 1. To cause to turn away from a focus of attention: DIVERT. 2. To pull in conflicting emotional directions

Disraught. —dis-tract'ed-ly adv.

dis-tract'er also dis-tract-tor (distraktor) n. 1. One that di Disturb: —dis-tract'ing-ly adv. —dis-trac'tive adi.

dis-tract-ed (di-strak'tid) adi. 1. Having the attention diverte

DIVERSION. 3. Mental or emotional confusion or didigitirac-tor. (di-strāk/tər) n. var. of DISTRACTER. distraction (distrak'shan) n. 1. The act of distracting or state being distracted. 2. Something that distracts, esp. an amusement 2: An incorrect answer presented as a or disturbance.

nen' < OFr. destreindre, to seize, compel < Med. Lat. distringere [htt.] to:hinder : dis-, apart + stringere, to draw tight.] Law. — v distrain (di-stran') v. -trained, -training, -trains. [ME distri debts:DISTRESS. —vi. To levy a distress. —dis-train'a-ble adi. debts. 2. To seize the property of in order to compel payment (To seize and hold (property) to compel reparation or payment

Guin'er: dis trai'nor n. —dis train'ment n. dis train'e (dis'traine) n. Law. One who has been distraine distraint (di-strant') n. [< DISTRAIN.] Law. The act or process distrait (di-strā') adi. [Fr. < Lat. distractus. uning: DISTRESS

-see DISTRACT.]

attentive or absent-minded, esp. due to anxiety of distract, persit